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David L. Meier
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May 20, 1996

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D. C. 20554

In the Matter of:

Implementation of the Local Competition
Provisions in the Telecommunications Act
of 1996 - Dialing Parity, Number Portability,
Notice of Technical Changes, Access to
Rights of Way

DOCKET FILE COPY ORIGINAL

CC Docket No. 96-98

Dear Mr. Caton:

Enclosed are an original and sixteen copies of the Comments of Cincinnati Bell Telephone Company in the above referenced proceeding. A duplicate original copy of this letter and attached Comments is also provided. Please date stamp this as acknowledgment of its receipt and return it. Questions regarding these Comments may be directed to Ms. Patricia Rupich at the above address or by telephone on (513) 397-6671

Sincerely,

David L. Meier

Enclosure

cc: Janice Myles (Paper and disk copy)
International Transcription Services, Inc.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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(Dialing Parity / Number Administration /)
Notice of Technical Changes / Access to)
Rights-of-Way))

COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY

SUMMARY

Cincinnati Bell Telephone Company ("CBT"), an independent, mid-size local exchange carrier, submits these comments in response to the Commission's proposed rules released April 19, 1996 to implement Sections 251 and 252 of the Telecommunications Act of 1996 (the "Act").¹ In its comments, CBT urges the Commission, in setting rules through this and other upcoming proceedings, not to lose sight of the unique circumstances of the small and mid-size LECs. CBT asserts that regulations pertaining to equal access beyond interLATA and intraLATA calling should not be included in any rules which result from the present docket. CBT believes that the Commission should not impose any consumer education requirements, nor should balloting be required. CBT asserts that rates for conduit space, poles and access to rights-of-way should be based on replacement costs, rather than embedded costs. CBT submits that the current Commission formula determining the rate for pole attachments does not lead to

¹ In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, released April 19, 1996. See also, Telecommunications Act of 1996, Pub. L. 104-104, §§ 251-252.

a just and reasonable rate, and must be modified to be consistent with the requirements of the Act to ensure that the incumbent LEC receives fair compensation.

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COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY

I. INTRODUCTION

Cincinnati Bell Telephone Company ("CBT"), an independent, mid-size local exchange carrier, submits these comments in response to the Commission's proposed rules released April 19, 1996 to implement Sections 251 and 252 of the Telecommunications Act of 1996 (the "Act").¹ Decisions made in this proceeding will have a profound impact on consumers, the development of competition in the telecommunications industry, and the rights and obligations of service providers.

CBT urges the Commission, in setting rules through this and other upcoming proceedings, not to lose sight of the unique circumstances of the small and mid-size LECs.

¹ In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, released April 19, 1996. See also, Telecommunications Act of 1996, Pub. L. 104-104, §§ 251-252.

Failure to recognize the more limited financial and technological resources of smaller companies and the needs of the markets they serve could have a negative impact on their customers. The intent of Congress in enacting the Telecommunication Act of 1996 was to benefit consumers. Therefore, the Commission, in this and other proceedings, must consider the impact of its decisions on all consumers, not just those served by large telecommunications carriers.

In its NPRM, the Commission requested that separate comments be filed dealing with (1) dialing parity; (2) access to rights-of-way; (3) number administration; and (4) public notice of technical changes. CBT files these comments in response to the Commission's request. While CBT supports the comments filed by the United States Telephone Association ("USTA") in this proceeding, CBT files these separate comments focused on the issues of dialing parity and access to right-of-way.

II. DISCUSSION

A. Dialing Parity

The Commission seeks comment on its tentative conclusion that Section 251(b)(3) creates a duty to provide dialing parity with respect to all telecommunications services that require dialing to implement a call.² The Commission's conclusions regarding this issue includes international, as well as interstate and intrastate local and toll services. While the scope of Section 251(b)(3) is unclear, CBT asserts that regardless of whether or not the section imposes a duty to provide dialing parity, it is simply not possible to provide such service today because

² NPRM at ¶ 206.

of technological limitations. Further, the NPRM appears to reflect some confusion on the part of the Commission regarding certain actions taken by state commissions related to this issue, particularly CBT's Ohio Case No. 93-432-TP-ALT, and the Public Utilities Commission of Ohio ("PUCO") Local Exchange Competition Case No. 95-845-TP-COI, both of which are cited in the NPRM.³

The Commission implies that the methodology adopted in CBT's case, known as "modified 2-PIC," is a statewide solution.⁴ This is incorrect. Modified 2-PIC was adopted by CBT and approved by the PUCO as part of the stipulation resulting in the settlement of CBT's Alternative Regulation Case No. 93-432-TP-ALT. It applies only to CBT. One other Ohio LEC has also adopted modified 2-PIC as part of the settlement of its alternative regulation case. While the PUCO approved these stipulated agreements and incorporated them into its orders in the two cases, there has been no effort by the PUCO to mandate modified 2-PIC for any other Ohio LEC.

In their comments in the PUCO Local Exchange Competition proceeding⁵, CBT and Ameritech Ohio pointed out that technical capabilities beyond full 2-PIC do not exist in the industry today. Other Ohio LECs and the Office of the Ohio Consumers' Counsel stated that intraLATA equal access should be implemented to the extent that technology and software are

³ NPRM at footnotes 286 & 287.

⁴ NPRM at ¶ 210.

⁵ Comments of CBT at p.15, Appendix B; Comments of Ameritech at p. 79, PUCO Case No. 95-845-TP-COI.

available. Technical and software capabilities beyond full 2-PIC simply do not exist at the present time, nor are they expected to be available within the next few years.

The ability to provide equal access or presubscribed calling for international calls, as well as domestic interLATA and intraLATA calling, would require a third PIC, beyond those for interLATA and intraLATA carriers. The result is effectively the same as smart-PIC or multi-PIC, regardless of the label given it or whether additional PICs are used for international calls or domestic calls at different times of the day.

The PUCO Staff in its recommendations allowed for the fact that smart-PIC or multi-PIC technology might not be available, and indeed it is not.⁶ CBT has central office switches produced by the two largest North American manufacturers of switching equipment, and neither manufacturer's Feature Planning Guide makes any mention of smart or multi-PIC or its future availability. The two-year Feature Planning Guide for the Lucent Technologies 5ESS switch, arguably the most technologically advanced and widely used central office switch on the market today, does not mention smart or multi-PIC in any way. The conversion to smart or multi-PIC methodology, when such technology is available, will be a large-scale project, requiring major expenditures of time and money on the part of incumbent LECs. At present, it is believed that smart or multi-PIC will involve more than just the addition of a central office feature. It will most likely be an Advanced Intelligent Network (AIN) application, and may be between three and five years in the future, at a minimum.

⁶ NPRM at footnote 287.

CBT asserts that regulations pertaining to equal access beyond interLATA and intraLATA calling should not be included in any rules which result from the present docket. CBT is concerned that the eventual introduction of international equal access calling will cause a substantial amount of customer confusion, with benefits accruing only to a limited number of high-end users. If necessary, a separate proceeding should be established in the future, when such technology is actually available, to determine the industry-wide cost and benefits which would result from equal access for international calling. The Commission should take no action at this time to implement dialing parity for international calls.

The NPRM also seeks comment on whether the Commission should impose on incumbent LECs any additional consumer education requirements concerning selection of competing telecommunications service providers.⁷ CBT believes that the Commission should not impose any consumer education requirements, nor should balloting be required. Balloting represents a major effort and expense, and is unwarranted in this case. Responsibility for the notification and education of consumers should be imposed on the carriers seeking those consumer's business, as part of those carriers' marketing efforts.

The Commission should not prescribe any additional standards as to how dialing parity should be implemented by the states. As long as states have in place a system which offers consumers the choice of at least two carriers, one of which is the local exchange carrier, the requirements of the Act have been met. The states should be given the discretion to adopt the

⁷ NPRM at ¶ 213.

methodology and implementation schedule which best fits the needs of the consumers and carriers in their state.

The NPRM raises several questions related to nondiscriminatory access to telephone numbers, operator services, directory assistance and directory listing.⁸ The Act's requirement for nondiscriminatory access to telephone numbers is already accomplished through the use of the industry's central office code assignments. In addition, with the action taken by the Commission in 1995 (*NANP Order*) to centralize and transfer the functions associated with the assignment and administration of local telephone numbers from the largest LECs to a newly created NANP Administrator, the existing nondiscriminatory process will be further strengthened.⁹ With the measures currently in place or ordered by the Commission, CBT believes that no further Commission action is necessary to ensure nondiscriminatory access to telephone numbers for all service providers.

CBT believes that the requirements for nondiscriminatory access to operator services and directory assistance apply only when a competing local service provider is using either a LEC's local exchange services on a resale basis or when the competing provider is using a LEC's unbundled switch ports. The nondiscriminatory dialing parity requirements should not apply: (1) when a competing provider uses its own operator or directory assistance services in association with the LEC's local exchange services or (2) when the competitor chooses to use

⁸ NPRM at ¶¶ 214-217.

⁹ Report and Order, CC Docket No. 92-237. Adopted and Effective July 13, 1995.

only the LEC's operator or directory assistance services without the use of either the LEC's local exchange resale service or unbundled switch ports.

B. Access to Rights-of-Way

In its NPRM, the Commission asserts that the Act requires all LECs to offer access to poles, ducts, conduits and rights-of-way to new entrants to the market on rates, terms and conditions that are just and reasonable.¹⁰ However, the Act also provides that access may be denied based on insufficient capacity, threat to safety or reliability, or for generally applicable engineering reasons.¹¹

The Commission requests comment on what "specific standards" should be employed to determine whether or not a carrier has insufficient capacity, such that the carrier would be justified in denying access to facilities.¹² CBT asserts that the Commission should rely largely on widely recognized engineering standards established by neutral bodies, (e.g., Underwriters Laboratory, IEEE, National Electric Safety Code, National Electric Code), to provide guidance as to whether capacity is insufficient to safely accommodate additional lines or facilities. CBT further submits that LECs must be permitted to reserve capacity for their own use, based on reasonable business forecasts or planned upgrades of facilities. If the Commission determines

¹⁰ Under the Act, these requirements are reciprocal, and incumbent LECs are provided a statutory right to utilize the poles, conduits and rights-of-way of other utilities and telecommunications carriers.

¹¹ NPRM at ¶¶ 220-222. The Act does not require new construction of facilities to accommodate requests for access to facilities.

¹² NPRM at ¶ 223.

that LECs are required by the Act to make reasonable accommodations for access by competitors, then LECs must be allowed to recover the costs incurred in making the accommodations.

CBT asserts that rates for conduit space, poles and access to rights-of-way should be based on replacement costs, rather than embedded costs. This would be particularly true in the determination of rates associated with access to or enlargement of conduit systems. Underground conduit systems have a long life, as a result of being constructed primarily from concrete. Many incumbent LEC conduit systems have been in operation for decades. The cost that would be incurred if these systems have to be replaced, enlarged or modified is significant, and any rate established for access to these systems must reflect these replacement costs to ensure that incumbent LECs are compensated. Thus, establishing just and reasonable rates based on the replacement cost of the access system is vital to ensure that the incumbent LEC is fully compensated for access to its system.

Further, CBT submits that the current Commission formula determining the rate for pole attachments does not lead to a just and reasonable rate, and must be modified to be consistent with the requirements of the Act to ensure that the incumbent LEC receives fair compensation. The current rate structure is based solely on usable pole space, the comparatively small space at the top of the pole where telephone, electric, and cable TV service wires are carried, and ignores the costs associated with the complete pole. The formula for determining the rate for pole attachments should be forward looking, and should be based on the fraction of usable space

utilized on the pole plus a reasonable assignment of the costs associated with the unusable space.¹³

The United States Court of Appeals for the D.C. Circuit has ruled against forced collocation of other service providers in the central office of an incumbent LEC.¹⁴ A valid comparison may be made between the use of duct space in an incumbent LEC's conduit system and the floor space in its central office, in that just as additional floor space cannot be easily added to central office space, additional duct space cannot readily be added to a conduit system. Indeed, in some cases, it would be impossible to expand the available space in a conduit system because of physical constraints which cannot be overcome. In these cases, requiring the granting of access to the conduit system for its competitors may deprive the incumbent LEC of the right to use its own property.

¹³ Section 703(e)(2) of the Act calls for the apportionment of unusable space "among entities so that such apportionment equals two-thirds of the costs of providing space other than the usable space that would be allocated to such entity under an equal apportionment of such costs among all attaching entities."

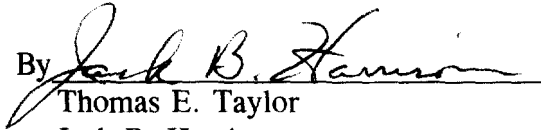
¹⁴ Bell Atlantic Telephone Companies v. FCC, 24 F.3d 1441 (1994).

III. CONCLUSION

CBT respectfully requests that the Commission carefully consider its comments filed in this proceeding as the Commission develops rules and regulations relating to the issues of dialing parity and access to rights-of-way.

Respectfully submitted,

FROST & JACOBS

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Dated: May 20, 1996
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